

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Ganpat Singh & Narpat Singh Vs. State of Rajasthan
(D.B. CRIMINAL JAIL APPEAL NO.435/2002)

D. B. Criminal Jail Appeal under Sec.374 (2) Cr.P.C. against the
judgment dated 20-2-2002 in Sessions Case No.177/2001 passed
by Sh. Girraj Prasad Gupta, RHJS, Additional Sessions Judge
(Fast Track) No.1 Jaipur City.

Date of Judgment:

October 04, 2006.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE CHATRA RAM JAT

Mr. Mahesh Gupta, Amicus Curiae, for the appellants.

Mr. R.P.Kuldeep, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Challenge in this appeal is to the judgment dated February 20, 2002 rendered by learned Additional Sessions Judge (Fast Track) No.1, Jaipur City whereby Narpat Singh and Ganpat Singh, the appellants herein, were convicted under section 302 IPC and sentenced to suffer imprisonment for life and fine of Rs.100/-, in default to further suffer rigorous imprisonment for three months.

2. As per prosecution story on August 23, 2000 informant Dhanraj Sharma (Pw.2) submitted a written report (Ex.P-1) at Police Station Subhash Chowk Jaipur stating therein that in the temple of Akhandeshwar Mahadev the room of Pujari was closed and foul smell was spreading. The police on reaching the spot found that room was locked from out side. The lock got

broken and in the room dead body of Ram Charan Pujari tied with electric wire was found lying in a pool of blood. Dead body was subjected to post mortem. On August 26, 2000 one Jugal Kishore (Pw.1) informed the police that appellants made confession before him that they killed Ram Charan. Statements of Jugal Kishore and other witnesses were recorded under section 161 CrPC, appellants were arrested and at their instance certain incriminating articles got recovered. Chance prints from the place of incident got lifted and sent for comparison along with the finger prints of the appellants and on completion of investigation, charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No.1 Jaipur City. Charge under section 302 IPC was framed against the appellants, who denied the charge and claimed trial. The prosecution in support of its case examined as many as 19 witnesses. In the explanation under Sec.313 CrPC, the appellants expressed that they were innocent. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. We have heard rival submissions and weighed the evidence adduced at the trial.

HOMICIDAL DEATH:

4. Since presence of eye witness could not be secured, the prosecution has relied on the circumstantial evidence. The first circumstance relied upon by the trial court was that death of Ram Charan was homicidal. We notice that as per post mortem report (Ex.P-26) following ante mortem injuries were found on the dead body:-

1. Lacerated wound 4 x 3.0cm on left side of temporal region of scalp involving upper 1/3 part of left pinna with depressed area of size 16.0 x 8.0 cm around it.
2. Two incised wounds of size 1.0cm x ¼ cm x muscle deep and ½ x ¼ cm x muscle deep found on distal phalanx of left ring and little finger at its palmer aspect all the antemortem hematoma skin of his hand was not fully degloved and found attached.
3. Bruise of size 4.0 x 3.5cm on right knee anteriorly in lower part, red bruise in colour covering skin is missing.
4. Bruise of size 3.0 x 2.5 cm on left knee anteriorly in lower part with red bruise dis construction covering skin is missing.
5. The demis which is exposed due to feeling off the skin around both ankles and feet due to putrefactive process also shows the mark of electric wire ligature at the level of ankle is on antero lateral aspect with hematoma corresponding

In the opinion of Dr.S.R.Kochar (Pw.11) the cause of death was ante mortem strangulation.

Having closely scrutinized the evidence of Dr.S.R.Kochar, we find that the prosecution is able to establish that the death of Ram Charan was homicidal in nature.

EXTRA JUDICIAL CONFESSION:

5. Second incriminating circumstance relied upon by the trial court was that the appellants made extra judicial confession of the guilt before Jugal Kishore (Pw.1) who in his deposition stated that on August 26, 2000 while he was returning from temple Govind Devji he saw appellants sitting on the wall of temple. On being asked as to why they were not visiting temple Akhandeshwar, the appellants replied that deceased was not repaying

them a sum of Rs.800/-. When on the preceding night they went to the deceased and demanded money, the deceased instead of making payment, threatened them to kill. The behaviour of deceased got Ganpat Singh angry and they caused injury with stone on the person of deceased and killed him. Relevant portion of statement of Jugal Kishore reads thus:-

"हम रात को बाबा के पास गए और बाबा से पैसे मांगे तो बाबा ने पैसे देने से मना कर दिया उल्टे हमें धमकी दी कि तुम्हें मरवा दूंगा। गणपत सिंह ने बताया कि मुझे गुस्सा आ गया। एक पत्थर पड़ा हुआ था जिससे हम दोनों भाई गणपत सिंह व नरपत सिंह बाबा को मार कर भाग गए।"

In the cross examination Jugal Kishore stated:-

"घटना के 4-5 माह पूर्व से मुलजिमान बाबा के पास आते जाते थे, इसलिए मुलजिमान को जानता हूं। मुलजिमान से मेरी राम राम श्याम श्याम के अलावा और कोई बात नहीं होती थी। मैं मुलजिमान के घर पर कभी नहीं गया। मैं मुलजिमान का घर नहीं जानता हूं।"

Evidently Jugal Kishore was stranger to the appellants and he used to meet them occasionally. The confession so made was not disclosed by Jugal Kishore to anybody though he had occasion to meet many people. Jugal Kishore admitted that after the confession made by the appellants, he straightway went to the police station and informed the police about the confession. Jugal Kishore deposed thus:-

"मुलजिमान द्वारा यह सब बताने पर मैंने सुभाष चौक थाने पर जाकर जुबानी कह दिया।"

"... जब मुलजिमान ने बातें बताई तब और कोई दूसरा नहीं था, मैं अकेला ही था दर्शनार्थी तो आ जा रहे थे। मैंने किसी दर्शनार्थी को रोक कर नहीं कहा कि मुलजिमान ऐसी बातें बता रहे हैं।"

6. In *Lakhan Pal Vs. State* (AIR 1979 SC 1620) their Lordships of the Supreme Court indicated that where a prosecution witness, stranger to the accused, deposed that he made the disclosure about the extra judicial

confession of the accused for the first time in the police station and that he never told about this to anyone else though he met a number of persons, it was unsafe to rely on his evidence.

7. The evidence of Jugal Kishore appears to us as highly unreliable and untrustworthy and conviction cannot be founded on such evidence. There is also nothing to show that Jugal Kishore and appellants were ever friendly with each other. So it is highly improbable that the appellants would open their heart before him to make a confession.

RECOVERY OF KNIFE:

8. Third incriminating circumstance relied upon by learned trial court against the appellants was that the knife allegedly used in commission of the offence got recovered at the instance of appellant Narpat Singh. Dilip Sharma, Investigating Officer (Pw.18) deposed that on the basis of disclosure statement of Narpat Singh (Ex.P-61) knife was recovered by him vide recovery memo (Ex.P-6) from the roof of temple Akhandeshwar. Madho Kishar (Pw.6) motbir of recovery, however in his examination in chief, stated that it was Ganpat Singh who got the knife recovered. This infirmity creates suspicion as to the recovery of knife. The prosecution has also not led any evidence that from the date of incident till his arrest Narpat Singh had any opportunity to go to the roof of temple Akhandeshwar for the purpose of concealing the knife. We thus find that the prosecution could not establish this circumstance beyond a reasonable doubt.

FINGER PRINTS:

9. Fourth incriminating circumstance, relied upon by the learned trial court, was that finger prints of the appellants matched with the chance prints lifted from the place of incident. It appears from the report of Finger Print Bureau (Ex.P-64) that Photographer visited the crime scene on August 23, 2000 and four chance prints were developed by expert. Specimen ten digit finger and palm prints of appellants were also taken. Chance print photographs were compared with the specimen ten digit finger and palm prints of the appellants and it was opined that they were similar and identical with the specimen finger prints of appellants. It may be noticed that finger prints of the appellants were not taken before the Investigating Officer. Dilip Sharma, IO (Pw.18) stated thus:-

"चान्स प्रिन्ट्स लेने हेतु मैंने मुलजिमान को थाना कोतवाली जहां कि फिंगर प्रिन्ट्स का सैक्शन है वहां भेजा था मेरे सामने फिंगर प्रिन्ट्स नहीं लिये थे मैं उनके साथ नहीं गया था।"

10. Under section 4 of the Identification of Prisoners Act, Police is competent to take finger prints of the accused but to dispel any suspicion as to its bonafides or to eliminate the possibility of fabrication of evidence it was eminently desirable that they were taken before or under the order of a Magistrate. Admittedly finger prints of the appellants were not taken by or under the order of the Magistrate as provided under section 5 of the Identification of Prisoners Act and this negligence on the part of IO casts a serious mistrust as to genuineness of the evidence. In Mohd. Aman Vs. State of Rajasthan (1997)10 SCC 44 their Lordships of the Supreme Court indicated thus:- (Para 8)

"... there is another circumstance which also casts a serious mistrust as to genuineness of the evidence. Even though the specimen finger prints of Mohd. Aman had to be taken on a number of occasion at the behest of the Bureau, they were never

taken before or under the order of a Magistrate in accordance with Section 5 of the Identification of Prisoners Act. It is true that under Section 4 thereof police is competent to take finger prints of the accused but to dispel any suspicion as to its bonafides or to eliminate the possibility of fabrication of evidence it was eminently desirable that they were taken before or under the order of a Magistrate.”

11. Since finger prints were not taken before a Magistrate we feel it unsafe to accept the evidence led in this regard.

APPELLANTS WERE SEEN NEAR THE TEMPLE:

12. Another circumstance relied upon by the trial court was that on August 21, 2000 the appellants were seen coming out of Akhandeshwar temple. Madho Kishan (Pw.6) deposed that he had seen the appellants on August 21, 2000 coming out of the temple and walking briskly. Kailash Chand (Pw.7) also saw the appellants on the said day coming out of the temple. According to him the appellants were empty handed and their clothes were not stained with blood. Merely because for some reason, the accused was seen running or walking briskly, it does not follow that he was the culprit although a strong suspicion may arise against him [Vide Vinod Samuel Vs. Delhi Administration 1991 CrLJ 3359 (SC)].

CLOTHES OF APPELLANTS STAINED WITH BLOOD:

13. Next circumstance relied upon by the learned trial court was that blood of deceased was found on the clothes of the appellants. Dilip Sharma, IO (Pw.17) deposed that pant of Ganpat Singh and Shirt of Narpat Singh got stained with blood. The pant and shirt were recovered vide

recovery memos Ex.P-20 and Ex.P-21. In the cross examination Dilip Sharma stated:-

"मुलजिमान को 26-8 को गिरफ्तार किया था ... मुलजिमान ने वे ही पेन्ट शर्ट पहन रखे थे जो मैंने जप्त किए। मुलजिमान खून सने कपड़े ही पहने रहे। मन्दिर के बाहर पकड़ा वहां खून सने कपड़े पहने हुए थे।"

Undeniably the incident occurred 3-4 days prior to the arrest of the appellants and it is difficult to believe that the appellants did not change the clothes. It is unlikely that the appellants would be wearing the clothes all this time without washing off the stains of blood. We find ourselves unable to place reliance on this evidence.

RECOVERY OF IDENTITY CARD OF DECEASED:

14. Last circumstance relied upon by the learned trial court was recovery of identity card of the deceased at the instance of appellant Ganpat Singh. Dayal Adwani (Pw.15) deposed that identity card of green colour got recovered by the police from the open park of Janta Bazar and he put signatures on the recovery memo. The identity card was lying in the corner of the park. As per the recovery memo (Ex.P-35) identity card of the deceased stained with blood got recovered at the instance of appellant Ganpat Singh. Dilip Sharma, IO (Pw.17) supported the recovery of identity card. Having closely considered the evidence of Dilip Sharma and Dayal Adwani, we find the recovery of identity card is of no consequence. It is inexplicable as to why appellant Ganpat took the card and threw it in the open park which was accessible to all. In our opinion, evidence of recovery of identity card at the instance of appellant Ganpat is not beyond of

suspicion and cannot be relied upon.

15. It is well settled that when a case rests on circumstantial evidence, such evidence must satisfy three tests:-

- (i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- (ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;
- (iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.

16. Applied these lucid tests to the facts of the instant case we find that evidence adduced at the trial is not qualitatively such that on every reasonable hypothesis the conclusion is that appellants are guilty. The prosecution failed to establish beyond reasonable doubt that the appellants were guilty. In the ultimate analysis we do not find that the evidence adduced by the prosecution created a network through which there is no escape for the appellants, the facts taken as a whole do not admit of any inference of their guilt. The prosecution could not prove beyond a reasonable doubt that the appellants committed the offence.

17. For these reasons, we allow the appeal and set aside the impugned judgment dated February 20, 2002 of the learned Additional Sessions Judge (Fast Track) No.1 Jaipur City. We acquit the appellants Narpat Singh and Ganpat Singh of the charge under section 302 IPC. The appellants Narpat Singh and Ganpat Singh, who are in jail, shall be set at liberty forthwith, if not required to be detained in any other case.

(Chatra Ram Jat),J.

(Shiv Kumar Sharma)J.

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